

## **REMARKS**

### **Status of Claims**

Claims 13, 14, 16 and 21-24 are pending and have been rejected by the Examiner. Accordingly, claims 13, 14, 16 and 21-24 are presented and at issue. Reconsideration and allowance of the application in view of the foregoing amendments and following remarks are respectfully requested.

### **Rejections Over Mitty (35 U.S.C. §102)**

Claims 13, 14, 16 and 21-24 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication 2001/0037453 to Mitty. In view of the telephonic interview conducted between the undersigned and the Examiner, it is believed that this rejection is now moot.

### **Rejections Over Raha 35 U.S.C. § 102 and 103**

Claims 13, 14, 16 and 21-23 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,282,709 to Reha. Claim 24 was rejected under 35 U.S.C. §103(a) as being unpatentable over Reha in view of Mitty. Based on the amendments herein, applicants respectfully traverse this rejection.

In the Office Action, the predictive code cited (Raha, Col. 5, lines 1-12 and Col. 9, lines 35-40) is sent separately from the cited communications message (the downloaded software; Col. 9l lines 56-60). In particular, the predictive code determines what software is present at the recipient and then, only after the recipient has authorized it, is the communications message (the software to be downloaded) sent to the recipient.

In contrast, in amended claim 13, the predictive code and the communications message are transmitted to the recipient computing device at the same time. Further, one of ordinary skill would not modify Raha to send the predictive code and the communications message at the same time because communications message (software update) contemplated in Raha is a large file that requires an installation. Unless the software update is requested it is not superfluously sent to the user. Indeed, if it was sent, installation, whether wanted or not, would occur. Modification of Raha to create a

system as recited in claim 13 would lead to undesirable results. Accordingly, it would not be a modification made by one of skill in the art.

Claims 14, 16, and 21-24 depend from claim 13 and, accordingly, are patentable for at least the same reason.

**Conclusion**

In view of the foregoing amendments and remarks, it is submitted that the application is now in condition for allowance. Such action is therefore respectfully requested.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any such issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 09-0463. In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

CANTOR COLBURN LLP  
Applicant's Attorneys

By:           / M. Brad Lawrence /

M. Brad Lawrence  
Registration No: 47,210  
Customer No. 46429

Dated this 4<sup>th</sup> day of September

Address: 20 Church Street, 22<sup>nd</sup> Floor, Hartford, CT 06103  
Telephone: (860) 286-2929  
Fax: (860) 286-0115